

1 UNITED STATES DISTRICT COURT

2 NORTHERN DISTRICT OF WEST VIRGINIA

3 Diana Mey,
4 on behalf of herself
5 and a class of others
6 similarly situated,

7 Plaintiffs,

8 VS.

CIVIL ACTION NO.

9 5:24-cv-55

10 William Pintas,
11 P&M Law Firm, LLC, et al.,
12 Defendants.

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14 Proceedings had in the hearing for preliminary injunction
15 in the above-styled action on May 13, 2024, before Honorable
16 John Preston Bailey, District Judge, at Wheeling, West
17 Virginia.

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19 APPEARANCES:

20 On behalf of the Plaintiffs:

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1 Monday Morning Session,
2 May 13, 2024, 10:00 a.m.

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4 THE COURT: Ask the clerk to call the case, please.

5 THE CLERK: This is the case of Diana Mey versus
6 William Pintas, et al., Civil Action Number 5:24-CV-55.

7 Will the parties please note their appearance for the
8 record.

9 MR. DONOVAN: Ryan Donovan, Your Honor, on behalf of
10 the plaintiff, Diana Mey, who's present in the courtroom today.

11 MR. GILBERT: Good morning, Your Honor. Jeffrey
12 Gilbert, Carlos Baralt, Jared Tulley, and Blake Humphrey for
13 the defendants.

14 THE COURT: All right. We are here for a hearing on
15 a preliminary injunction. I have a whole pile of affidavits,
16 declarations. Does any party wish to call witnesses to
17 supplement or contest what's in the affidavits, or present any
18 other testimony?

19 Mr. Donovan, start with you.

20 MR. DONOVAN: Your Honor, I don't intend to call any
21 witnesses at this time, pending anything that may be raised by
22 the Pintas defendants. I did want to submit two additional
23 pieces of evidence to the Court. One that we referenced in our
24 brief filed last week were recordings of the calls at issue in
25 this case. They're difficult to submit electronically, and so

1 I thought it would be easier to simply bring those with us
2 today. We can handle these with the clerk after the hearing,
3 if that's what you prefer.

4 THE COURT: All right. That's fine.

5 MR. DONOVAN: I was also made aware that there was an
6 issue with the exhibit that we filed to our reply this morning.
7 It was a PDF from the Puerto Rican court, and for technical
8 reasons that I don't understand, frankly, it was accepted by
9 the ECF system, but I think it was blank, so we did bring a
10 copy of that that we would submit to the Court, just so that
11 you have that in front of you today.

12 THE COURT: Have you received it?

13 MR. GILBERT: We received it just now, Your Honor.
14 Mr. Baralt can speak more directly to it, but the one that's
15 filed in the Puerto Rican court is signed by counsel, not only
16 for the plaintiffs in Puerto Rico, but also the defendant in
17 Puerto Rico, with our lawyers from Puerto Rico signing off on
18 it, and then the Puerto Rican judge, the court in Puerto Rico,
19 signing an order scheduling the initial scheduling conference.
20 Is that correct?

21 MR. BARALT: This is the memorandum that the parties
22 submit jointly to the court before the initial scheduling
23 conference, and based on the proposal for discovery the parties
24 submit jointly, the Court entered the case management order.
25 This, I believe, is the last draft that we exchanged. It's not

1 signed by her attorneys in Puerto Rico, and it's not time
2 stamped by the Court, but I don't have any reason to think that
3 it's different from the last version that we exchanged.

4 MR. GILBERT: But the one that is filed in
5 Puerto Rico obviously is signed off on by all counsel in
6 Puerto Rico and approved by the judge, who issued an order
7 based upon that report in Puerto Rico.

8 MR. DONOVAN: Your Honor, I'm obviously limited to a
9 great extent in what I can understand about what's happening on
10 the Puerto Rican docket. This is submitted simply in support
11 of an argument regarding whether or not the deposition that
12 they seek to take of me is --

13 THE COURT: Bring it up.

14 MR. DONOVAN: Thank you, Your Honor. We'll file it
15 as an exhibit, Exhibit 1, for today.

16 MR. GILBERT: Judge, in response to your question, we
17 do rely on the declarations and affidavits that are filed, and
18 submit them as evidence for today, obviously. Mr. Baralt and I
19 will be arguing, so any specific questions that you may have,
20 if we get into any questions about particular proceedings in
21 Puerto Rico, Mr. Baralt will be addressing that. We can treat
22 it as evidence or whatnot, but I'm not planning to call him as
23 a witness.

24 MR. DONOVAN: I simply have some concern, Your Honor,
25 with drawing a line between what's the testimony of Mr. Baralt,

1 if he does submit it, and what is the unsworn statement of
2 counsel making an argument. So I would prefer that he either
3 be a witness or an advocate, if that's okay with my opposing
4 counsel.

5 THE COURT: Is there something that's not in the
6 declarations?

7 MR. GILBERT: We believe that everything is in the
8 declarations, but if there's any questions that you may have
9 that you want to clarify, we will do our best, obviously, to
10 clarify that for you.

11 THE COURT: All right. Part of the fun I had over
12 the weekend was reading all this stuff. I can get it -- my one
13 law clerk has shown me how I can get it onto my iPad now, so
14 I've read everything. I think I understand your positions, but
15 we'll start with Mr. Donovan, since the burden is on you.
16 Anything you want to add to what's in your memorandum?

17 MR. DONOVAN: Your Honor, I think we're fairly
18 comfortable standing with what's in our memorandum and our
19 reply brief filed this morning. This is straightforward.
20 Ms. Mey sent a demand, as she does, rather than litigating the
21 case or even responding, and while pretending to engage in a
22 good-faith negotiation, Mr. Pintas went off, filed this suit
23 that is absolutely without basis.

24 And I do want to focus on that, and that is the one
25 thing I want to draw the Court's attention to, the distinction

1 between the injunction we're seeking and the injunctions --
2 some injunctions that the defendants have cited that have been
3 denied or reversed, are that this is not just a matter of us
4 trying to cut off parallel litigation. This is an absolutely
5 blatantly vexatious suit. The evidence we've submitted makes
6 clear that Ms. Mey received calls on February 8, 2023, prior to
7 her having any communication whatsoever with the Pintas
8 defendants.

9 Mr. Pintas went off, filed a lawsuit in Puerto Rico
10 that omitted that information, knowingly omitted that
11 information, then engaged in all sorts of underhanded
12 procedural tactics that we discussed at the last hearing and
13 are well reflected in our papers and has caused Ms. Mey to
14 spend upwards of \$60,000 out of pocket defending herself.

15 More importantly, the suit in Puerto Rico, in
16 addition to being vexatious, is by intent designed to interfere
17 with this Court's authority to resolve her federal claims. The
18 statement was made in Pintas's brief that we were asking for a
19 fourth exception to the Anti-Injunction Act. That's not the
20 case at all. The exception we're going under is the
21 in-aid-of-jurisdiction exception. It allows the Court to
22 enjoin state court litigation that interferes with the Court's
23 authority and flexibility to resolve a federal claim.

24 The significance of the vexatious nature of the
25 lawsuit is not that we're asking for some additional exception;

1 it's that there could be no dispute that this lawsuit
2 interferes with this Court's authority and flexibility to
3 resolve her federal claims. Some courts have declined to enter
4 injunctions under those circumstances in deference to comity;
5 to say, hey, we're not going to step on the toes of the state
6 court when they've got valid litigation in front of them that
7 they're trying to resolve.

8 But that narrow construction of this exception in
9 deference to comity goes completely out the window when you
10 have a lawsuit like this that is without jurisdiction, without
11 foundation, and without factual support, that is, and
12 engaging -- in which one of the parties has engaged in so much
13 jurisdictional procedural tomfoolery for the express purpose of
14 harming Ms. Mey.

15 So we believe this pretty clearly falls under the
16 Court's authority to issue this injunction. We do, again,
17 emphasize that despite the 40 pages of briefing that has come
18 in over the last week or so, I have yet to see any response
19 whatsoever to the evidence regarding these February 8 calls and
20 the impact that has on the case, and I look forward to seeing
21 what my opposing counsel has to say about it today.

22 THE COURT: Mr. Gilbert.

23 MR. GILBERT: Thank you. If I may respond briefly to
24 what Mr. Donovan just said, and then obviously I have argument,
25 if the Court will take it.

1 Obviously, we believe that the Anti-Injunction Act
2 does not apply, that it has to be read extremely narrowly, that
3 the fact that there is a state court case going on at the same
4 time that there is a federal court case going on, or the fact
5 that the state court case in Puerto Rico started more than a
6 week before the federal court filed goes against everything
7 that Mr. Donovan just said, because he said that the court case
8 in Puerto Rico, by intent, was designed to interfere with the
9 federal claim. The action was filed more than a year before
10 any action was filed here.

11 THE COURT: You say a year, but how long was it until
12 Ms. Mey found out about it?

13 MR. GILBERT: She found out about it right away when
14 it was filed, Judge, because we have the -- we had -- this was
15 not raised at the temporary restraining order hearing. An
16 in-person process server here in Wheeling, West Virginia, on
17 four separate days, April 6th of this year -- I'm sorry, April
18 6th, 2023, April 7, 2023, April 8, 2023, and April 10, 2023, on
19 four separate days, made six attempts at her house, including,
20 on the first or second attempt, speaking with her husband, who
21 refused to accept service of the complaint. In hindsight, the
22 process server should have just left it there and that would
23 have been the end of it.

24 But the bottom line, Judge, is the default was
25 vacated in Puerto Rico, so the issue on service is moot.

1 Concurrent jurisdiction exists. This case can proceed here.
2 But there's absolutely, we believe, no power of the federal
3 court sitting here to stop a case, enjoin a Puerto Rican court
4 from proceeding with the litigation that has been proceeding
5 for now more than 13 or 14 months.

6 And what I'd like to do -- let me just finish
7 responding to him. He raises all these issues about
8 Puerto Rico's without jurisdiction, the case is without
9 foundation, it's without factual support, there's tomfoolery
10 that is harming Ms. Mey, that it's vexatious. Let the
11 Puerto Rico court decide it. That's what the Puerto Rico court
12 is supposed to do. That's the entire system that Congress set
13 up in 1789 and 1793 with the anti-injunction law, to allow it
14 to go forward. We truly believe, Judge, that this Court
15 sitting here has absolutely no power whatsoever to enjoin and
16 stop the litigation that's pending in Puerto Rico.

17 And your temporary restraining order cites *Atlantic*
18 *Coastline Railroad*. They cite *Atlantic Coastline Railroad*. We
19 cite *Atlantic Coastline Railroad*. Everybody is citing it, but,
20 Judge, if you really read the opinion -- and I'd like to spend
21 some time reading this US Court -- US Supreme Court opinion,
22 portions of it, because the injunction in this case was vacated
23 for the exact reasons why we believe that there should be no
24 injunction in this case. And if you would indulge me, I would
25 just like to just point out some items that the Supreme Court

1 is talking about that we need to understand for the proceedings
2 here.

3 It says that the state court shall remain free from
4 interference by federal courts, and that has remained in time
5 from 1789 and 1793 through till today. A court of the United
6 States may not grant an injunction to stay proceedings in a
7 state court except as expressly authorized by the act of
8 Congress or, where necessary, in aid of execution, or protect
9 or effectuate judgments.

10 And the progeny on the understanding of necessary in
11 aid of execution or to protect or effectuate its judgments,
12 they've read those two together because the instances where
13 it's jurisdiction necessary in aid is limited to either an in
14 rem case, where you don't want two courts fighting over a piece
15 of property -- and that is the *American Honda* case, and we can
16 go to that case next, because I want to address that case --
17 and whether to protect and effectuate judgments, which is also
18 the *American Honda* case, because in the *American Honda* case,
19 even though it says you can't have two courts simultaneously
20 fighting over in rem jurisdiction, what it also says is, on the
21 issue of taking away a federal court's jurisdiction really is
22 so that the federal court is unable to effectuate or protect
23 its judgments.

24 And if you take a close -- it's not even a close
25 reading. If you take a reading of the *American Honda* case, in

1 that case you're talking about multidistrict litigation where
2 there was a settlement, with that federal court having
3 exclusive jurisdiction. There was a settlement order on the
4 multidistrict litigation. Some other party tried to disrupt
5 that in an arbitration or state court proceeding, and at that
6 point the court said, yes, we are going to enjoin that
7 proceeding because we are going to protect and effectuate a
8 judgment that has been put in place through MDL for the
9 settlement, and our order is in place. None of that is the
10 case here.

11 Additionally, in *Atlantic Coast*, it says,
12 understandably, this dual-court system was bound to lead to
13 conflicts and frictions. On the face of the act, it is an
14 absolute prohibition against enjoining state court proceedings
15 unless the injunction falls within one of the items, and they
16 say it's only the second item, which is necessary in aid of
17 execution. And the Supreme Court says --

18 THE COURT: In aid of jurisdiction.

19 MR. GILBERT: In aid of jurisdiction, I apologize.

20 The argument implies that in certain circumstances
21 the federal court may enjoin state court proceedings even if
22 that action cannot be justified by any of the three exceptions,
23 and the Supreme Court says we cannot accept any such
24 contention. Legislative policy is here expressed in a
25 clear-cut prohibition qualified only by specifically defined

1 exceptions.

2 And then it says the exception should not be enlarged
3 by loose statutory construction. Proceedings in state court
4 should normally be allowed to continue unimpaired by
5 intervention of the lower federal courts, with relief from
6 error, if any, through the state appellate courts and
7 ultimately this Court.

8 I believe that the plaintiff is trying to incite fear
9 in this Court by saying that Puerto Rican -- the state court
10 proceedings in Puerto Rico are foreign; that they are conducted
11 in a foreign language; that it's in a far-flung jurisdiction.
12 The jurisdiction is three or four hours away from here by
13 plane. Puerto Rico is sitting or presiding over this case as
14 if any other state, even a state court in Wheeling, West
15 Virginia, would be presiding over the case.

16 And if the case were even pending here or in Ohio or
17 in Pittsburgh or wherever the case may be, the federal court
18 and the state court would have concurrent jurisdiction.
19 According to the TCPA, it is not exclusive to be a claim only
20 decided by the federal courts. State courts can decide the
21 TCPA claim. Federal courts can. It's concurrent jurisdiction.

22 And the Supreme Court continues: First, a federal
23 court does not have inherent power to ignore the limitations of
24 the act and to enjoin state court proceedings merely because
25 those proceedings interfere with a protected federal right or

1 invade an area preempted by federal law even when the
2 interference is unmistakably clear. We don't have that issue
3 here, because the state and federal courts, as I've said, have
4 concurrent jurisdiction over TCPA claims.

5 And then this is cited in our TR motion -- in your
6 TRO order, but I just wanted to expand on it. Whatever the
7 doubts may be, we have strongly affect -- are strongly affected
8 by the general prohibition of the Anti-Injunction Act. Any
9 doubts as to the propriety of a federal jurisdiction injunction
10 against state court proceedings should be resolved in favor of
11 permitting the state courts to proceed in an orderly fashion to
12 finally determine the controversy. The explicit wording of
13 Section 2283 itself implies as much, and the fundamental
14 principle of a dual system of courts leads inevitably to that
15 conclusion. So the injunction was vacated by the US Supreme
16 Court for all of those reasons in that opinion, and that is
17 what should be followed in this case.

18 Looking just quickly at the *American Honda* case,
19 where I did state that it was multidistrict litigation, there
20 the court was actually protecting and effectuating a judgment
21 that it had in place. And obviously, we don't have that in
22 this case. It does quote, the necessary in aid of its
23 jurisdiction exception to the Anti-Injunction Act is widely
24 understood to apply most often when a federal court was the
25 first in obtaining jurisdiction over a res or an in rem action

1 and the same federal court seeks to enjoin suits in state
2 courts involving the same res.

3 We do not have that here. And this Court was decided
4 on the third prong, because it read the second prong -- the
5 second exception and the third exception as requiring the same
6 burden of proof on the plaintiff, and said that the way that
7 you would fall under the exception of the second prong was akin
8 to falling under the exception of the third prong, which is
9 where a court wants to protect and effectuate its judgments.

10 So that's the additional legal argument that I wanted
11 to provide to you. But these claims of the lawsuit in
12 Puerto Rico being vexatious or far flung or in a remote
13 jurisdiction, none of that should be any consideration to this
14 Court, because this Court is not sitting in judgment of the
15 Puerto Rico court. It's well established that lower federal
16 courts, the District Courts of the United States, do not have
17 jurisdiction over the state courts. So this Court does not
18 have jurisdiction over the Puerto Rico court.

19 Let it all play out. There's no reason why it can't
20 play out in Puerto Rico and play out here, if that be the case.
21 If they want to litigate here at the same time, let them
22 litigate here. But the point is, Judge, that this case,
23 whether there's issues of fact or questions of law or whatever
24 the case may be in Puerto Rico, that is something for the
25 Puerto Rico court to decide. One second.

1 So we have argued in our filing from Friday that the
2 Court should not enjoin the Puerto Rican court from -- in
3 accordance with the All Writs Act or the Anti-Injunction Act,
4 because neither statute permits that type of relief. The
5 plaintiffs cannot show that there are circumstances that are
6 exigent or critical. The plaintiff, who's the defendant in
7 Puerto Rico, has three lawyers from one firm representing her.
8 They've filed an answer. They could have removed the case to
9 federal court if they wanted. They could have filed, with
10 their answer, a compulsory claim alleging the claims that they
11 have alleged here. They have not done any of that.

12 Any speculations and musings about what might happen
13 in discovery in Puerto Rico is insufficient to invoke the
14 Anti-Injunction Act. There are no cases which says that a
15 federal court should enjoin a state court from any discovery
16 proceedings. There's no cases that say anything like that.

17 And in addition, obviously, if the Court were to
18 enjoin the Puerto Rican court, then -- enjoin the parties from
19 proceeding in Puerto Rico, then we would request a substantial
20 bond. The bond amount that we suggested was \$130,000, which
21 was actually the \$130,000 demand that the plaintiff made upon
22 the Puerto Rican case plaintiffs before the lawsuit was filed.

23 We believe that the bond is important because the
24 bond should be put in place to make certain that if the parties
25 that are enjoined, if you were to enjoin them, would be able to

1 go against the bond for any damages that they would suffer if
2 they are forbidden from proceeding in the action that they have
3 filed in Puerto Rico. Excuse me one second, Judge.

4 Mr. Baralt is going to argue one other doctrine
5 about -- that goes along with the anti-injunction statute.

6 MR. BARALT: Thank you, Your Honor. Besides the
7 argument that Mr. Gilbert explained regarding the lack of
8 jurisdiction to issue an injunction under the AIA and the All
9 Writs Act, we believe that there are cases from the US Supreme
10 Court that also extend the *Younger* doctrine to civil cases.
11 The *Younger v. Harris* case from 1971 established an abstention
12 doctrine where federal courts should not enjoin criminal
13 proceedings in state courts. The citation for that is 401 U.S.
14 37. And there are three cases that have since extended that
15 doctrine to the civil litigation area. So the argument is
16 that --

17 THE COURT: What are the three cases?

18 MR. BARALT: The three cases are *Pennzoil v. Texaco*,
19 481 U.S. 1; *Juidice v. Vail*, 430 U.S. 327; and *Sprint*
20 *Communications v. Jacobs*, 571 U.S. 584.

21 And the theory behind these holdings is besides
22 having an exception that you have to go through in the AIA to
23 enjoin state court litigation where the *Younger* abstention
24 doctrine applies, it creates a separate and independent barrier
25 to federal court injunctions of pending state court cases.

1 And the idea where the *Younger* abstention would apply
2 to civil cases in this scenario is that the -- specifically the
3 *Sprint Communications* case that I cited states that there's a
4 preclusion of federal intrusion in ongoing state proceedings
5 where there's a matter pending before the state court involving
6 certain orders that are uniquely in furtherance of the state
7 court's ability to perform their judicial functions.

8 And our argument would be that since in the
9 Puerto Rico case there's already a case management order in
10 place that establishes the boundaries and deadlines for
11 discovery to occur, and that order already addresses the
12 sanctions that the Court would issue for violating it, there is
13 an interest of the Puerto Rico court to be able to enforce its
14 orders, to control the judicial processes, and that's the
15 reason why we believe, based on the case that I mentioned, the
16 *Younger* abstention doctrine is also a barrier to the injunction
17 that's been requested today. Thanks.

18 MR. GILBERT: And, Judge, so the only thing that I
19 would add, just pointing back to the *Atlantic Coastline* case
20 again, is that nothing should be done to enlarge by loose
21 statutory construction the three exceptions. And the court
22 states, we conclude that the second exception implies something
23 similar to the concept of injunctions to protect or effectuate
24 judgments. Both exceptions to the general prohibition of the
25 Anti-Injunction Act imply that some federal injunctive relief

1 may be necessary to prevent a state court from so interfering
2 with a federal court's consideration or disposition of a case
3 as to seriously impair the federal court's flexibility and
4 authority to decide the case.

5 But like in this case, as it was in the *Atlantic*
6 case, the court states, in short, the state court and federal
7 courts had concurrent jurisdiction in the case and neither
8 court was free to prevent either party from simultaneously
9 pursuing the claims in both courts.

10 There's nothing going on in the Puerto Rico case that
11 interferes with this Court's jurisdiction, absolutely nothing.
12 The court system was designed for concurrent jurisdiction, for
13 parallel cases to move on. Nothing going on there that
14 prevents this Court from exercising its full jurisdiction.

15 One thing that I would like to point out, Judge, is
16 that I believe the temporary restraining order enjoined all
17 three of my defendant clients, Mr. Pintas individually, the P&M
18 Law Firm in Chicago, and the P&L Law Firm in Puerto Rico. Only
19 the P&L Law Firm in Puerto Rico is a plaintiff in that case.
20 So I don't think that there needs to be any injunction
21 continued, period, but --

22 THE COURT: Are you telling me that Mr. Pintas has
23 nothing to do with P&M Puerto Rico law firm?

24 MR. GILBERT: No. He absolutely does. But he is not
25 a plaintiff in that lawsuit.

1 THE COURT: I understand that.

2 MR. GILBERT: He is not a plaintiff in that lawsuit.

3 And again, with respect to litigating hours away from
4 West Virginia, according to court dockets and searches and
5 whatnot, we understand that Plaintiff Mey has litigated in many
6 jurisdictions throughout the United States, including 39 cases
7 here in this district, but also in Michigan, in Florida, and
8 New York, and has pursued, at least from what we see, ten
9 appeals in different cases, so she's not new to litigating.

10 And again, any fear that they're putting in this
11 Court's mind or in their papers about the litigation that's
12 proceeding in Puerto Rico are totally unfounded. She has
13 counsel there. She is litigating there for over a year. And
14 this Court -- there's nothing that's going on in that case that
15 interferes with this Court's jurisdiction.

16 THE COURT: Tell me what minimum contacts Ms. Mey has
17 with Puerto Rico.

18 MR. GILBERT: Judge, first I would say that that's
19 for the Puerto Rico court to decide.

20 THE COURT: Well, that may be, but it's going to be
21 me deciding it today.

22 MR. GILBERT: Well, we're not here to decide minimum
23 contacts in Puerto Rico. But I will tell you that she placed
24 calls and sent demand letters to the law firm that was involved
25 in looking for clients to handle Camp Lejeune cases, and all of

1 that was generated out of Puerto Rico.

2 THE COURT: What law firm? I'm sorry. What law
3 firm?

4 MR. GILBERT: P&M Law Firm Puerto Rico. Puerto Rico.
5 And that's a factual question, Judge, which this Court cannot
6 decide based upon what's happening in Puerto Rico. This Court
7 cannot decide what minimum contacts are in Puerto Rico.

8 MR. BARALT: Your Honor, I would like to add that
9 when the Puerto Rico court was faced with her argument that it
10 lacked minimum contacts, the Puerto Rico court gave us an
11 opportunity to have an evidentiary hearing, and she was going
12 to appear at that hearing, and the Court gave us both an
13 opportunity to decide that issue on January 24th.

14 But there was an agreement with the court by her
15 attorneys to simply reserve the jurisdictional defense and move
16 forward with the case and have an opportunity to answer the
17 complaint. So it's not true the idea that the court declined
18 to rule on that issue already. The court simply recognized her
19 right to reserve that defense, as anyone would have a right to
20 reserve a jurisdictional argument for any time throughout a
21 judicial process, even on appeal.

22 But the court gave us an opportunity, and after the
23 court entered its order, which is in my declaration,
24 summarizing agreement with her attorneys, they didn't appeal
25 that order either. It was months after that they filed this

1 case. So the court did give us an opportunity to have a final
2 resolution on whether we have minimum contacts or not. It
3 wasn't the case, I just decline not to resolve that.

4 MR. GILBERT: But, again, that's for the Puerto Rican
5 court to decide.

6 THE COURT: Humor me. You're telling me that the
7 phone calls were placed by the Puerto Rico law firm; is that
8 correct?

9 MR. GILBERT: No.

10 THE COURT: I'm sorry. I misunderstood you then.

11 MR. GILBERT: They work with callers that do that.
12 But when you talked about contacts in Puerto Rico, everything
13 that is alleged in this case was run out of the Puerto Rican
14 law firm, whether it was in negotiations with Ms. Mey or
15 whether it was retaining or hiring agents to pursue possible
16 candidates for claims at Camp Lejeune, but the lawsuit arose in
17 Puerto Rico as a result of a demand letter that Ms. Mey issued
18 seeking \$130,000 in damages after she misled these callers by
19 creating a pseudonym of Rhonda Nicholson and making up an
20 address and making up a persona and a history, an identity and
21 whatnot, and the lawsuit was filed there for that --

22 THE COURT: There's nothing in her email that
23 mentions anything about a Puerto Rican law firm, is there?

24 MR. GILBERT: In her email?

25 THE COURT: Yeah. Her demand letter, as you call it.

1 MR. BARALT: That's correct. But our position, and
2 what we addressed at the stage where we were discussing her
3 motion to dismiss for minimum contacts, is that all of the
4 agents that were retained to pursue potential plaintiffs and
5 make the phone calls that she received, if it ends up being the
6 case that she received phone calls from them, and all the
7 efforts done by all of the Pintas parties to pursue those
8 plaintiffs were done by the Puerto Rico entity exclusively.
9 And the Chicago office and Mr. Pintas himself were not involved
10 in the efforts to find plaintiffs. It was the Puerto Rico
11 entity that did that.

12 THE COURT: So you're telling me that the law firm in
13 Puerto Rico authorized these agents to place illegal telephone
14 calls under the TCPA to people in the United States?

15 MR. GILBERT: No, we're not telling you that, Judge.

16 THE COURT: Tell me where am I wrong.

17 MR. GILBERT: Because we're not agreeing to the fact
18 that they are illegal telephone calls.

19 THE COURT: Okay. But you authorized people to make
20 these telephone calls.

21 MR. GILBERT: The law firm.

22 THE COURT: The law firm in Puerto Rico. I don't
23 mean you.

24 MR. GILBERT: The law firm in Puerto Rico hired
25 callers to make these phone calls, yes. Yes. But we are not

1 saying that they're illegal. As a matter of fact, I think the
2 Court is aware of the fact, because the plaintiff has appeared
3 in front of you before, from my understanding, we see Diana
4 Mey, the plaintiff, as not a consumer advocate necessarily but
5 as a professional plaintiff. She knew exactly what she was
6 doing by creating the pseudonym, by using business operative
7 telephone systems, not residential phone systems, to entrap
8 these callers into pursuing. She signed on. She signed on to
9 the website to permit the callers to call her.

10 THE COURT: That's after the first call.

11 MR. GILBERT: We don't know that, Judge. Those are
12 factual questions that belong in the purview of the Puerto
13 Rican court and have nothing to do with this Court's
14 jurisdiction. If this Court moves forward concurrently, which
15 it can, obviously, then discovery will be had in this case,
16 just like discovery is ongoing in the Puerto Rico case.

17 But respectfully, Judge, this United States District
18 Court can't sit in judgment of the state court anywhere in the
19 United States, including its territory of Puerto Rico. This
20 District Court doesn't have the authority to do that. And
21 there are no cases that talk about Anti-Injunction Act and
22 drill down to what a factual determination may be by a Puerto
23 Rican court. It doesn't rob this Court of jurisdiction. It
24 doesn't harm this Court's jurisdiction. There's no reason
25 whatsoever why the Puerto Rican court cannot continue, and

1 plaintiff may choose to file here instead of filing a
2 compulsory counterclaim. That was her decision. She proceeds
3 here.

4 But there is nothing in the law, Judge, nothing which
5 allows you at this point, which allows this Court,
6 respectfully, to say I'm enjoining the plaintiffs in
7 Puerto Rico because I don't trust what Puerto Rico's going to
8 do or I don't trust that the court in Puerto Rico is going to
9 be able to make a distinction on minimum contacts. I don't
10 trust that court so I'm going to enter an injunction. That is
11 not the law, Judge. That's absolutely not the law. And happy
12 to answer any other questions for you.

13 THE COURT: Mr. Donovan.

14 MR. DONOVAN: Yes, Your Honor.

15 THE COURT: How long do you need for discovery?

16 MR. DONOVAN: In this case? Assuming they cooperate,
17 it could go pretty quickly. My experience in these class
18 cases, as you've seen many times, is especially when it comes
19 to the issue of obtaining records of class phone calls, it can
20 take a little while, because we are often told that the records
21 are not within the possession, control, and custody of the
22 people who authorize the calls to be made and we have to issue
23 subpoenas to third parties. They move to quash the subpoenas.

24 Reasonably, probably -- I'd like to say three or four
25 months, but probably I'd say reasonably six to eight months.

1 It takes a while in these cases, as you've seen.

2 Your Honor, I'll go fast, but there's a lot to
3 address there. First of all, it's well within this Court's
4 jurisdiction in the context of the Anti-Injunction Act to take
5 evidence and make a finding as to the vexatious nature of the
6 Puerto Rican lawsuit. Your determining, for the purpose of
7 deciding whether it's vexatious, that there was no jurisdiction
8 or that there was no factual basis, or anything else related to
9 that, is not an improper encroachment on the Puerto Rican
10 court's authority. You're not deciding the Puerto Rican case
11 for it. You're deciding it in the context of this case,
12 whether that case is vexatious.

13 And to that end, Your Honor, I said I looked forward
14 to hearing what my opposing counsel had to say about some of
15 those issues, and frankly, I heard nothing. I heard that the
16 existence of the February 8 phone calls are a factual question.
17 Your Honor, I'd submit that they are an undisputed factual
18 question in this case. We have submitted call records. We are
19 submitting recordings of those calls. All of the information
20 necessary to rebut that assertion is well within the
21 possession, control, and custody of the Pintas defendants, and
22 they have nothing.

23 Same goes for jurisdiction, Your Honor. And I want
24 to point out kind of the sneaky way this was addressed in the
25 briefs. We saw all these references in the briefs to

1 communications in February 2023, just generally, just generally
2 February 2023. The fact that they -- the fact that the calls,
3 as the Court pointed out, occurred before any communication is
4 significant.

5 We also see an unsupported statement in the brief
6 that the email domain that Ms. Mey sent the demand letter -- as
7 they call it -- to included the Puerto Rican entity. There's
8 no evidence of that. Your Honor, I got on the website last
9 night and looked at it again, just to check, just to be sure
10 that something hadn't been changed. She sent an email to the
11 P&M law firm, which if you go on their website, is a Chicago
12 law firm that operates in the United States. It says nothing
13 about anything going on in Puerto Rico.

14 And the question of minimum contacts is looked at
15 from the perspective of the plaintiff. Ms. Mey had absolutely
16 no reason to know, and there's no evidence to suggest she had
17 any reason to know, she was interacting with any Puerto Rican
18 entity whatsoever. And there is no evidence in the record in
19 this case or the Puerto Rican case to suggest otherwise.

20 It's important to note that when she filed her motion
21 to dismiss in Puerto Rico, despite asking for several
22 extensions of time to produce evidence and affidavits, they
23 produced nothing. The issues regarding Puerto Rico and the
24 Spanish pleadings in this case, I was kind of shocked to see
25 the way those were raised in the brief. I think they were

1 certainly not consistent what we've said or anything the
2 Court's said.

3 No one's here to cast aspersions on the Puerto Rican
4 court or the Puerto Rican court system. Diana Mey is
5 represented by a fine team of Puerto Rican lawyers, a very
6 expensive team of Puerto Rican lawyers, who are well respected
7 in that community, and they have just as much problem with
8 what's happened down there as anyone.

9 On the other hand, when Diana Mey filed her motion to
10 dismiss, putting the lie to the allegations in Pintas's
11 complaint in Puerto Rico, her lawyer withdrew. I don't know
12 why he withdrew. Maybe it was totally coincidental. But
13 there's no attack on Puerto Rican courts. And asking the Court
14 to enjoin this is not an attack or an affront to Puerto Rican
15 courts. I think all the argument along those lines is entirely
16 improper.

17 I do want to address a couple factual issues,
18 additional ones, with this process server. It was never
19 served. We put out in our second brief in support of the
20 preliminary injunction some additional facts on that. The
21 process server did come to Diana Mey's door with what she
22 described as a Spanish lawsuit. Her husband knew nothing about
23 it, told him to get the hell out, and he did. And that's when
24 she first drew the claim -- drew the connection to the email
25 she had previously received, and that's when I started calling

1 frantically to the law firm in Puerto Rico. Hey, I represent
2 Diana Mey in West Virginia. I'm not licensed in Puerto Rico.
3 I don't want to go too far, but can you tell me what this is
4 about. Can you give me some information. If they had,
5 probably would have accepted service. But I just kept getting
6 put off and put off and my calls went unreturned. The people
7 said, well, I've got to talk to my boss before I can talk to
8 you. I can't tell you anything about this case. I can't give
9 you a copy of it in English, which we now know from their
10 appendix they had all along.

11 The reason for that is that while I'm making these
12 frantic calls trying to figure out what's going on, they're
13 getting a default judgment. And getting that default judgment
14 and hiding it from us is why Ms. Mey could not remove this case
15 to federal court. It's -- she couldn't make these -- if she
16 had made these compulsory counterclaims they are saying she
17 should have made, she would have been subjecting herself to the
18 jurisdiction of the Puerto Rican court in an effort to defend
19 cases where there's no jurisdiction to start with in the first
20 place, so they're not compulsory counterclaims. That's crazy.

21 With respect to some of the legal argument we saw
22 here, to claim that a federal court has no authority to enjoin
23 a state court under these circumstances is to completely ignore
24 the plain language of the Anti-Injunction Act. What do we
25 start with? We start with the text and the purpose. The text

1 says you can enjoin a state court proceeding in aid of your
2 jurisdiction when the state court threatens to deprive this
3 court of the authority or flexibility to resolve a federal
4 claim. Plain language. There is no dispute that this case and
5 the injunction we're seeking falls within that exception to the
6 Anti-Injunction Act.

7 Now, there are cases. We heard about the *Atlantic*
8 *Coast* case law. We cited that. The *Atlantic Coast* case
9 says -- and I think we all agree on this -- that you shouldn't
10 expand that exception with a loose statutory construction, in
11 the interest of comity. That's the purpose for that, in the
12 interest of comity with the state courts. And the *Baldwin* case
13 from the Second Circuit that we've cited and that the Court
14 relied on in the TRO order says when you have a lawsuit that is
15 patently vexatious, as I would submit there is no other way to
16 view this case filed by Mr. Pintas in Puerto Rico, all those
17 concerns about comity go out the window. You don't owe any
18 principle of comity to a vexatious lawsuit.

19 In addition, opposing counsel read to us from all
20 sorts of cases. We pointed this out in our reply brief. All
21 of those cases involve the necessary-to-effectuate-a-judgment
22 exception to the Anti-Injunction Act. And they are, whether
23 purposefully or not, conflating that exception to the
24 Anti-Injunction Act, under which we are not moving, with the
25 in-aid-of-jurisdiction exception under which we are moving.

1 And the reason for that is that obviously if you're
2 moving under the exception that allows the Court to protect or
3 enforce its judgment, then there's got to be a judgment. As
4 they say, we don't have a judgment in this case, there's
5 nothing to protect or enforce. We're not moving under that
6 exception. None of those cases have any application to this
7 case whatsoever.

8 What we do see, the cases that do have a lot of
9 application to this case, are the cases involving complex
10 litigation in federal court that's threatened by, underlined,
11 vexatious lawsuits in a state court. It's important to -- this
12 is not just Diana Mey's case. This isn't an MDL. But the same
13 principles apply, because what's at stake in this case is not
14 just this Court's authority to resolve Diana Mey's individual
15 claim against Pintas and the Pintas defendants, but the claims
16 of untold thousands or tens of thousands of other class members
17 who will have the same claim, whose claims are also threatened
18 by this vexatious litigation. And that's the point, Your
19 Honor. You strip away everything else from this case, all you
20 have to do is apply a little bit of common sense to see what's
21 going on here.

22 These defendants don't like it when plaintiffs sue
23 them. I understand that. No one wants to be sued. Under the
24 TCPA, Congress has authorized people like Diana Mey to act as
25 these private attorneys general. That's the only way the TCPA

1 is enforced. And it's a tough statute. It's strict liability.
2 And people violate it with impunity, and when they do, it
3 hurts. And as a result, having failed -- we just -- there was
4 an admission in court earlier today, I think a pretty startling
5 admission, about agency in this case, which is usually one of
6 the biggest issues.

7 So we've got an issue -- we've got a case here that's
8 going to proceed, and it's probably going to cost Pintas a lot
9 of money, and so what does he do? Let's fight the plaintiffs.
10 Diana Mey has been countersued in Montana -- Idaho, I guess.
11 She's been accused of being a professional plaintiff. Over and
12 over again we've been able to defeat those attacks on her,
13 because once those attacks work, TCPA advocacy is gone.

14 If someone like Pintas can respond to a demand letter
15 with a vexatious and false -- indisputably false. They don't
16 dispute those facts today -- lawsuit in Puerto Rico or
17 anywhere, it would be -- they talk about Ms. Mey litigating
18 cases all over the country. The Puerto Rican elements of this
19 case, the fact that they served her in a Spanish newspaper, in
20 Spanish, all those issues, those are -- that's evidence that
21 supports a finding that the underlying lawsuit is vexatious,
22 but it's not dispositive.

23 It would be no different if Mr. Pintas had gone off
24 and filed a false and vexatious lawsuit totally lacking
25 jurisdiction in Ohio. It might be a little harder to prove

1 that it was vexatious, pretty easy to do so in this case, but
2 this Puerto Rican issue is a total red herring.

3 Bottom line, Your Honor, this Court absolutely has
4 the authority to enter the injunction, to make the same
5 findings that it made in its TRO order. I haven't heard
6 anything today that changes anything that the Court found or
7 concluded in the TRO order. They talk about these -- they say
8 typically this happens, ordinarily this happens. Thank god
9 this is not an ordinary case, but in those cases where the
10 facts are closest to this, courts have entered injunctions, and
11 those injunctions have been upheld under an abuse of discretion
12 standard.

13 I do briefly just want to mention the issue of a
14 bond, if the Court is to enter an injunction. This is in our
15 reply.

16 THE COURT: I got it.

17 MR. DONOVAN: Okay. Very good. Anything else, Your
18 Honor?

19 THE COURT: No.

20 MR. GILBERT: If I may, Your Honor, I would just --
21 what Mr. Donovan just mentioned, I would assume that he's never
22 been in federal court enjoining a state court before on
23 these -- in these circumstances; otherwise, he would have told
24 us about it, and that's exactly the point. If this case had
25 been filed in Illinois, where the Chicago law firm is, or

1 whatever, he wouldn't be in federal court seeking an injunction
2 to prevent the Illinois case from going forward.

3 THE COURT: No, because she would have been served in
4 English. There wouldn't have been a default judgment. She
5 could have removed to federal court and everybody would have
6 been happy.

7 MR. GILBERT: I can tell you, Judge, that in -- so I
8 can tell you that there are many summonses issued in this
9 United States of America that are issued in English and Spanish
10 and Creole and Haitian and whatnot. That is exactly the point.
11 He's telling you that he's not injecting fear into this Court
12 by saying that the summons was in Spanish. That is allowed,
13 Judge. That is allowed in the United States.

14 And like I said, if we had filed in Illinois or Ohio
15 or West Virginia or whatever the case may be, there would be no
16 coming into this court seeking to enjoin another state court
17 anywhere here in the United States except for the fear that
18 he's putting into this Court with respect to that.

19 Additionally, Judge, the Anti-Injunction Act has not
20 been changed in more than 200-plus years, so there should be no
21 additional reading into it. And again, there's nothing going
22 on in Puerto Rico that zaps the jurisdiction of this Court from
23 you.

24 And with respect to February 8 -- and I don't think
25 that we need to get in the facts, because we're not trying the

1 facts at this point, but if she got a call on February 8 or got
2 a text on February 8, it could have been shut down immediately
3 by saying, I'm on the do-not-call list. Please don't call me
4 again. And that would have been it. But she created the
5 pseudonym, false identity, false address, false story, and
6 perpetuated 16 or 19 more calls so that she could end up making
7 a almost extorting demand from our clients for \$130,000, when
8 she could have hung up the phone and said, I'm on the
9 do-not-call list, if, in fact, that call was made.

10 The lawsuit in Puerto Rico is not vexatious or
11 frivolous, and this Court, respectfully, does not have the
12 jurisdiction to enjoin it from going forward. Thank you,
13 Judge.

14 THE COURT: I will issue a decision within the next
15 couple days.

16 MR. DONOVAN: On that issue, Your Honor, I probably
17 don't have to remind you about this, but I would kick myself if
18 I didn't. I do think the TRO expires after 14 days, so we
19 would suggest finding of good cause to extend that until the
20 Court can issue an order on the preliminary injunction.
21 Arguably expires after 14 days. I don't know whether -- our
22 position is we're not under Rule 65, but I think it would be
23 better to be safe than sorry.

24 THE COURT: All right. I will extend it for an
25 additional 14 days on the reasons that time is running out and

1 this Court needs a couple of days. It's not going to be 14
2 days, but it needs a couple of days to put an order together.

3 MR. GILBERT: Thank you, Judge.

4 THE COURT: Thank you.

5 MR. DONOVAN: Your Honor, may I submit this?

6 THE COURT: You may.

7 (Proceedings concluded at 10:58 a.m.)

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1 CERTIFICATE

2 I, Cindy L. Knecht, Registered Professional Reporter and
3 Official Reporter of the United States District Court for the
4 Northern District of West Virginia, do hereby certify that the
5 foregoing is a true and correct transcript of the proceedings
6 had in the above-styled action on May 13, 2024, as reported by
7 me in stenotypy.

8 I certify that the transcript fees and format comply with
9 those prescribed by the Court and the Judicial Conference of
10 the United States.

11 Given under my hand this 15th day of May 2024.

12 /s/Cindy L. Knecht

13 _____
14 Cindy L. Knecht, RMR/CRR
15 Official reporter, United States
16 District Court for the Northern
17 District of West Virginia
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